IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6435 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KARSANDAS SHANKARLAL PATEL

Versus

AHMEDABAD EDUCATION SOCIETY THROUGH SECRETARY

Appearance:

MR KIRIT I PATEL for Petitioners

MS KJ BRAHMBHATT for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/10/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. This matter is squarely covered by decision of this court in special civil application No.6745 of 1995 (Coram: Mr.Justice K.R.Vyas, J.) decided on 14.10.98.

#. Otherwise also, from the document, annexure-B, the society has decided to give gratuity to both, teaching and non-teaching staff. Whether under the Bombay Primary Education Act, 1947, or Rules framed thereunder, there is provision of giving gratuity to the teaching or non teaching staff or not is not material. Even if there is no provision for giving gratuity to the employees, it is always open to the employer to give benefit of gratuity to its employees. The Ahmedabad Education Society exhibited itself to be a model employer and despite of the fact that there is no provision for giving gratuity to the teaching and non-teaching staff it has extended that benefit which deserves to be appreciated.

#. I fail to see any justification in the action of the Society to challenge the order of Brother Justice K.R.Vyas when the Society itself voluntarily has decided its own to give benefit to its employees of gratuity way back in the year 1981. All these petitioners have retired admittedly after 1981 and as such, they are entitled for the benefits which are extended by the very Society to teaching and non teaching staff. The other grounds raised by learned counsel for the respondent deserve no acceptance for the reason that once the Society has come up as a model employer, I fail to see any justification in raising contention of delay in filing of the petition. Otherwise also, it is a claim for gratuity and in such matters, it is difficult to dismiss the matters only on the ground of delay and laches.

#. In the result, this petition is allowed and the Society is directed to pay gratuity amount to the petitioners with interest at the rate of 12% p.a. from the date of filing of the petition to the date of the payment thereof. The claim made by the learned counsel for the petitioners for interest from the date of retirement and that too at the rate of 18% p.a. deserves no acceptance. The petitioners have not filed the petition earlier and now they want to rely and take benefit of the decision given by this court in special civil application No.6745/95 (supra). They cannot be given such benefit, otherwise, it will unnecessarily burden the respondent without there being any fault on their part. In case the petitioners consider that they are entitled for amount of gratuity they could have come before this court within reasonable time of their retirement.

#. The learned counsel for the petitioner then contended

that in the earlier petition interest has been awarded on the gratuity amount from the date of retirement. That is a different matter. In case this plea would have been raised there, possibly that court would not have awarded interest from the date of retirement.

#. So far as the claim for interest @ 18% p.a. is concerned, when the petitioners themselves have claimed interest @ 12% p.a., how this claim can be accepted merely because the learned counsel for the petitioner has chosen to claim so. The learned counsel for the petitioners also prayed to award costs but I do not find any merits in this contention for the reason that if the petitioners are poor persons and they are not getting pension, they are certainly entitled for free legal aid and they could have approached to the Gujarat High Court Legal Aid Committee. If the petitioners have not approached the Legal Aid Committee for giving them free legal aid and they have chosen to engage advocate, that goes to show that they have sufficient means to bear out the expenses of litigation or what the learned counsel for the petitioners contended is not correct. When the petitioners would have been entitled for free legal aid, how far it is justified to saddle costs of this petition against the respondents. No order as to costs.

#. The respondents are directed to calculate the amount of gratuity payable to these petitioners within a period of fifteen days form the date of receipt of writ of this order and to pay the said amount together with interest at the rate of 12% p.a. thereon from the date of filing of this petition till the date of payment thereof, within fifteen days next. In case this order is not complied with by respondents, the petitioners shall be entitled for interest at the rate of 18% p.a. from the date of filing of the petition. Rule is made absolute in aforesaid terms.

.....

(sunil)